

**EXHIBIT E**

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VIA FACSIMILE

Douglas Lewis  
Sidley Austin Brown & Wood LLP  
Bank One Plaza  
10 South Dearborn Street  
Chicago, IL 60603

Re: MDL 1332; Burst v. Microsoft Corporation: Patent Deposition

Dear Doug:

If the issue is privilege, as your first letter stated, then it should matter not whether the patents are in suit or not. Rather, the question is relevance, a point which I believe your second letter concedes.

In that letter, you say that "we cannot fathom what relevant or non-privileged information Burst could possibly be seeking from Microsoft's counsel." The relevance is this: Burst has alleged that Microsoft misappropriated trade secrets, particularly trade secrets germane to faster-than-real-time transmission across "bursty" networks. After executing an NDA, and otherwise providing assurances of confidentiality, Microsoft then used the Burst trade secrets as the basis to file patent applications on its own "novel" faster-than-real-time delivery techniques. See Troy Batterberry deposition of September 23, 2003. This is a specific, and important, breach of the NDA and Microsoft's obligations towards Burst.

On privilege, as Microsoft has pointed out in past cases, and as it obviously believes given its deposition of Mr. Hein in this case, there is much that can be properly asked of a prosecuting patent attorney without running afoul of the privilege. Should you think a particular question goes too far, I have every confidence that you will be zealous in instructing the witness not to answer.

**HOSIE, FROST, LARGE & MCARTHUR**

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I would appreciate a call so that we may get this scheduled as promptly as possible.

Very truly yours,

Spencer Hosie

cc: Robert Yorio